IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

D.B. CIVIL WRIT PETITION NO. 5576/2001

Banwari Lal Sharma, Son of Shri Jamuna Prasad Sharma, aged about 21 years, resident of Chapedi Pada, Badi, District Dholpur, Rajasthan

.....Petitioner

Versus

1. The State of Rajasthan through Commissioner, Transport Department, Government of Rajasthan, Parivahan Marg, Jaipur.
2. The District Transport Officer and Taxation Authority, Department of Transport, Dholpur, Rajasthan.
3. The District Transport Officer and Taxation Authority, Department of Transport, Bharatpur, Rajasthan.

.....Respondents

Date of Order :: 10th September, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

None appears for the petitioner
Mr. Banwari Lal Avasthi, Additional Government Advocate for the respondents

ORAL ORDER (PER R.M. LODHA,J.):

None appears for the petitioner. The Additional Government Advocate invited our

attention to the order dated 31st October, 2002 passed by the Division Bench in the case of Prem Swaroop Versus The State of Rajasthan (D.B. Civil Writ Petition No. 7251/2002).

2. The Division Bench in the case of Prem Swaroop held thus:

> "The petitioner-herein, who is a transporter by profession has challenged the constitutional validity of the Rajasthan Finance Bill, 2002 by which Rajasthan Motor Vehicle Taxation Act, 1951 has been amended by incorporating the amendments, as contained in Section 11(ii), 12 (ii) and 13(ii) of the Bill. True and correct text of the aforesaid provisions of the Rajasthan Finance Bill, 2000 incorporating amendment in the Act of 1951 are reproduced as under:-
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> > "4(2) in sub-section (2), for the existing second proviso, the following shall be substituted namely:-
> >
> > "Provided further that where a motor vehicle is found plying after the surrender of the certificate or registration, the tax on such vehicle shall be payable forthwith for the entire period for which such registration was surrendered alongwith a penalty equal to five times the amount of tax but no such tax or penalty shall be charged from empty vehicle going for repair or for test purpose."
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> > 12(ii) for punctuation mark "," appearing at the end, the punctuation mark "," shall be substituted; and thereafter

the following new proviso shall be added, namely:-

"Provided further that where a motor vehicle is found plying after the surrender of the certificate of registration, the Special Road Tax on such vehicle shall be payable forthwith for the entire period for which such certificate of registration was surrendered, alongwith a penalty equal to five times the amount of Special Road Tax but no such tax or penalty shall be charged from empty vehicle going for repair or for test purposes."

13 (2)

"(4) Where a motor vehicle is found plying after the surrender of the certificate of registration, the tax levied under section 4 and section 4-B on such vehicle shall be payable forthwith by the owner or person having possession or control of the motor vehicle, for the entire period for which such certificate was surrendered, alongwith a penalty equal to five times the amount of tax but no such tax or penalty shall be charged from empty vehicle going for repairs or for test purposes."

A perusal of the aforesaid sections as also the objects and reasons stated for enactment of the Rajasthan Finance Bill, 2000 clearly indicates that large number of buses are kept without any kind of permits after they surrender their registration certificate and these buses are largely responsible for clandestine operations on nationalised routes evading payment of tax. In order to check this illegality a pressing need was felt to bring them under the tax net as also by imposing

penal tax to discourage plying of such vehicles.

The grounds of challenge to the aforesaid Rajasthan Finance Bill, 2000 are two-fold. It was first of all submitted by learned counsel for the petitioner Mr. Bharat Vyas that the amended provisions of Section 4, 4-b and 5 by substituting it with the amended provisions as contained in section 11(ii), 12(ii) and 13(ii) provide levy of the tax as a penalty in order to discourage use of certain vehicles which is beyond the legislative competence of the State Legislature since the State Legislatures have no legislative power or competence to make a law providing for imposition of tax as a penalty. He has also relied upon a decision reported in Inder Kumar Goyal Vs. State of Rajasthan (RLW 1992 (1) 206) challenging the imposition of penalty. It was further submitted that it is the Central Act which will prevail over the State Act in case the State Act is repugnant to the Central Act. Elaborating it further it was next contended by him that the amendments introduced in the Bill are repetitive in nature as the Rajasthan Motor Vehicle Taxation Act, 1951 already incorporates a provision of this nature and for this purpose he read out some of the provisions of the Act.

Having heard the learned counsel for the petitioner, we do not find substance in either of these contentions. In so far as the contention regarding reiteration of the provisions is concerned, we have found that the Rajasthan Taxation Act of 1951 prior to this amendment do not contain any provision which could take care of such vehicle which are plying after surrender of their registration certificates without payment of tax although they are freely found plying even after the certificate of registration is surrendered by the transporters. The provisions which were read out by learned counsel for

the petitioner before us speaks of such vehicles which have to pay the taxes at the time of their registration and the consequence in the event of their failure to do so, but they do not incorporate any provision for such vehicles which ply after their certificate of registration is surrendered. The reasons and objects for introducing the amendments also discusses the same situation and thus we find absolutely no force in the submission that the amended provisions would result in double taxation to the transporters for the same vehicle or that it is a reiteration of certain provisions since they already exist.

The contention regarding legislative competence of the State to the effect that in case of conflict between the Central Law and the State Law, it is the Central Legislation which has to prevail, also has no force for this argument has absolutely no application to a situation of this nature where there is no controversy that the amendments are repugnant to any of the central legislation. Since we find no force in any of the aforesaid contentions, we do not feel persuaded to admit this writ petition. Hence, it stands dismissed at the admission stage itself."

3. For the self-same reasons, this writ petition is liable to be dismissed and is dismissed with no order as to costs.

MAHESH CHANDRA SHARMA,J. R.M.LODHA,J.